

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|  |   |                      |
|--|---|----------------------|
| In the Matter of                         | ) |                      |
|  | ) |                      |
| Qwest Communications                     | ) | WC Docket No. 02-314 |
| International, Inc.                      | ) |                      |
|  | ) |                      |
| Consolidated Application for Authority   | ) |                      |
| to Provide In-Region, InterLATA Services | ) |                      |
| in Colorado, Idaho, Iowa, Montana,       | ) |                      |
| Nebraska, North Dakota,                  | ) |                      |
| Utah, Washington, and Wyoming            | ) |                      |

**COMMENTS OF INTEGRA TELECOM OF NORTH DAKOTA, INC.,  
INTEGRA TELECOM OF UTAH, INC., AND INTEGRA TELECOM OF  
WASHINGTON, INC.**

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Dated: October 15, 2002

## **SUMMARY**

The Commission cannot approve Qwest's Application for Section 271 authority for North Dakota, Utah or Washington based upon the UNE loop rates filed with the North Dakota Public Service Commission on August 5, 2002; the UNE loop rates allowed to go into effect on July 10, 2002 by the Public Service Commission of Utah; or the UNE loop rates filed on September 26, 2002 with the Washington Utilities and Transportation Commission. First, the state commissions have not approved these rates. Second, the new rates purport to be based upon the "benchmarking" test adopted by the Commission, but Qwest completely misapplies that test. Third, the "benchmarking" test as applied by Qwest does not produce cost-based rates. Finally, use of the "benchmarking" test is not appropriate because Qwest has not shown that Colorado is an appropriate benchmark state. The UNE loop rates in North Dakota, Utah, and Washington are excessively high in comparison to other states, and the loop rates in Washington have not been calculated correctly. Finally, the Qwest Applications for North Dakota, Utah and Washington should be denied because there is insufficient competition in North Dakota, Utah and Washington to justify granting Qwest long-distance authority.

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**COMMENTS OF INTEGRA TELECOM OF NORTH DAKOTA, INC.,  
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WASHINGTON, INC.**

Integra Telecom of North Dakota, Inc., Integra Telecom of Utah, Inc. and Integra Telecom of Washington, Inc. (collectively, “Integra”) submit these comments concerning the above-captioned Consolidated Application of Qwest Communications International, Inc. (“Qwest”) for authority to provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming filed September 30, 2002 (“Application”).<sup>1</sup> Integra Telecom of North Dakota, Inc., Integra Telecom of Utah, Inc. and Integra Telecom of Washington, Inc., provide competitive local exchange and long distance

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<sup>1</sup> *Comments Requested on the Application By Qwest Communications International, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, Public Notice, WC Docket No. 02-314, DA 02-2438, released September 30, 2002.

services in North Dakota, Utah and Washington, respectively. Integra filed comments in the proceedings addressing Qwest's first set of Section 271 applications.<sup>2</sup>

Qwest has made substantial progress in North Dakota, Utah and Washington toward meeting the competitive checklist requirements of Section 271 of the Telecommunications Act of 1996 ("Telecom Act"). However, the unbundled network element ("UNE") pricing for loops that Qwest charges its competitors is too high and must be significantly reduced in North Dakota, Utah and Washington before Qwest may be granted Section 271 authority in those states.

**I. THE COMMISSION SHOULD REJECT THE UNE LOOP RATES PROPOSED FOR NORTH DAKOTA**

On May 16, 2002, Qwest filed new UNE loop rates with the North Dakota Public Service Commission ("NDPSC"). The NDPSC allowed the proposed rates to go into effect on June 5, 2002, subject to review in a forthcoming UNE rate proceeding. On August 5, 2002, Qwest filed North Dakota SGAT Sixth Revision Exhibit A, further lowering UNE loop rates. As with the May 16, 2002, revision, there is no indication that the UNE loop rates filed on August 5, 2002, have been determined to be TELRIC-compliant by the NDPSC; they are apparently the result of the same misapplication of the Commission's benchmarking process. Prior to these Qwest filings, the UNE loop rates in effect in North Dakota were set as a result of an arbitration proceeding between AT&T and US West in 1997.<sup>3</sup>

The Commission cannot approve Qwest's application for Section 271 authority based upon the UNE loop rates submitted to the NDPSC on May 16, 2002 or those filed August 5, 2002. First, only the NDPSC may set UNE rates, not Qwest itself. Second, while the rates

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<sup>2</sup> WC Docket No. 02-148, Comments of Integra Telecom of North Dakota, Inc. (July 3, 2002); WC Docket No. 02-189, Comments of Integra Telecom of Utah, Inc. and Integra Telecom of Washington, Inc. (August 1, 2002). Integra incorporates these comments by reference.

purport to be based upon the “benchmarking” test adopted by the Commission,<sup>4</sup> Qwest completely misapplies that test. Third, the “benchmarking” test in fact demonstrates that the UNE loop rates in effect do not comply with TELRIC. Fourth, the “benchmarking” test is not even appropriate in these circumstances. Finally, even if the Commission were to consider the newly proposed rates, the proposed rate reductions are inadequate.

**A. The NDPSC Did Not Evaluate the Loop Prices**

Under the Telecom Act, only state commissions may set the rates for unbundled network elements.<sup>5</sup> The new UNE loop rates submitted to the NDPSC have not been subject to review by the NDPSC, or to cross examination by interested parties. The NDPSC has not investigated the Qwest rate proposal. Because there has been no reasonable evaluation of Qwest’s rates and costs, the Commission should deny Qwest long-distance authority in North Dakota until the NDPSC has been able to review the new UNE loop rates.

**B. Qwest Misapplies “Benchmarking”**

The UNE loop rates that Qwest unilaterally set in North Dakota in May 2002 were allegedly justified by the “benchmarking” test adopted by the Commission as were, presumably, those set by Qwest in August 2002.<sup>6</sup> In the *Pennsylvania 271 Order*, the Commission used a “benchmarking” test to confirm whether specific UNE rates already set by the Pennsylvania Public Utility Commission were within “the range that a reasonable TELRIC-based ratemaking

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<sup>3</sup> Consultative Report of the North Dakota Public Service Commission, July 1, 2002, at 260, 264 (“NDPSC Report”); AT&T Interconnection Arbitration, Case No. PU-453-96-497.

<sup>4</sup> *Comments Requested on the Application By Qwest Communications International, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Colorado, Idaho, Iowa, Nebraska, and North Dakota*, Public Notice, WC Docket No. 02-148, DA 02-1390, released June 13, 2002 (“Qwest CO/ID/IA/NE/ND Application”) at 163-164.

<sup>5</sup> See 47 U.S.C. §§ 252(c)(2), 252(d).

<sup>6</sup> Qwest CO/ID/IA/NE/ND Application at 163-164.

would produce.”<sup>7</sup> The benchmarking test was one tool developed by the Commission to determine whether a Bell Operating Company’s (“BOC”) UNE rates were in compliance with TELRIC. Qwest transforms that analytical tool into a rate-setting formula for generating new UNE rates that Qwest believes will pass muster as compliant with TELRIC. As Qwest states, “Qwest reduced the 2-wire loop rates in each zone in the state by a uniform percentage to bring the composite statewide average rate down to the level of the Colorado benchmarked composite rate.”<sup>8</sup>

The Commission must reject this approach because it is inconsistent with the requirements of the Telecom Act and Commission precedent. First, by reducing existing UNE loop rates by “a uniform percentage,” Qwest fails to establish rates based upon a “bottom up” approach as required by the Act.<sup>9</sup> Second, the Commission used the benchmarking test as an analytical tool, not as a rate setting formula as Qwest has done here. This is because, among other reasons and as stated above, UNE rates may be set only by a state commission. The new UNE loop rates proposed by Qwest have not been established by the NDPSC, and they are not based on a “bottom up” approach.

**C. Application of the Benchmarking Test Proves Qwest’s Application Must Be Denied**

Proper application of the “benchmarking” test demonstrates that the Qwest application must be denied. By reducing UNE loop rates in North Dakota by a particular percentage in order to bring them within rates that could satisfy a benchmarking test, Qwest acknowledges that the

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<sup>7</sup> *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419 (2001) (“*Pennsylvania 271 Order*”) at ¶ 62.

<sup>8</sup> Qwest CO/ID/IA/NE/ND Application at 165.

<sup>9</sup> *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Dkt. No. 02-35,

UNE rates set five years ago by the NDPSC are no longer TELRIC compliant. Those rates set five years ago, however, are the only rates that have been approved by the NDPSC. There are no other UNE rates for the Commission to consider at this time. The NDPSC has not approved the new Qwest rates; it has only allowed them to go into effect pending a more thorough examination. Because the existing UNE rates in North Dakota are no longer consistent with TELRIC, Qwest fails to satisfy the requirements of Sections 251 and 252.

**D. The Benchmarking Test Is Not Applicable In These Circumstances**

Moreover, application of the “benchmarking” test—even if it had otherwise been correctly applied—is inappropriate in these circumstances. The test to determine when benchmarking is appropriate was stated in the *Pennsylvania 271 Order*:

The Commission has stated that a comparison is permitted when the two states have a common BOC; the two states have geographic similarities; the two states have similar, although not necessarily identical, rate structures for comparison purposes; and the Commission has already found the rates in the comparison state to be reasonable.<sup>10</sup>

Qwest has made no demonstration whatsoever that the criteria described above have been satisfied in order to permit benchmarking of UNE rates in Colorado to UNE rates in North Dakota. Most importantly, the last criteria has not been satisfied because the Commission has never before reviewed the UNE rates in Colorado for compliance with TELRIC. As the Commission previously stated, “the most relevant factor of the four-part test is TELRIC compliance. Without a finding of TELRIC compliance for the benchmark state, a comparison loses all significance.”<sup>11</sup> Without a prior finding of TELRIC compliance by the benchmark rates used to compare the rates under review, benchmarking is impermissible. Since the benchmark

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Memorandum Opinion and Order (rel. May 15, 2002) (“*Georgia/Louisiana 271 Order*”) at ¶ 287 (“UNEs are priced from the ‘bottom up,’ that is beginning with a BOC’s costs plus a reasonable profit[.]”)

<sup>10</sup> *Pennsylvania 271 Order* at ¶ 63.



rates at issue have not been found compliant with TELRIC by the Commission, benchmarking has no utility in this proceeding.

**E. The Proposed UNE Reductions Are Inadequate**

Even if the Commission were to consider the new untested, unsupported UNE loop rates in North Dakota submitted by Qwest for this application, the Commission must rule that Qwest has not demonstrated compliance with TELRIC. The reduction proposed by Qwest to the interim UNE loop rates set in 1997 by the NDPSC is inadequate, as evidenced by a comparison of UNE loop rates over the same period of time in other states.

For example, the New York Public Service Commission set a forward-looking UNE loop rate of \$19.32 in an arbitration between NYNEX and MCI Telecom-munications Corporation in December 1996.<sup>12</sup> The most recent UNE loop rate in New York is a weighted average of \$11.49.<sup>13</sup> Thus, in five years, the New York Public Service Commission has reduced the average UNE loop rate by 40%. When geographic deaveraging is considered, the UNE loop rate in Zone 1 (Manhattan) has fallen to \$7.70, a reduction of 60% from the un-deaveraged 1997 UNE loop rate. Qwest's reduction from 1997 rates in North Dakota is paltry in comparison.

Even if the actual UNE loop rates in New York were justifiably lower than the UNE loop rates in North Dakota, a similar overall reduction in UNE loop rates should apply to Qwest's UNE rates. The significant decline in UNE loop rates in New York indicates a number of factors that should be equally applicable to Qwest: increased efficiency, lower costs, as well as greater sophistication by state commissions in evaluating ILEC rates for compliance with TELRIC.

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<sup>11</sup> *Id.* at ¶ 64.

<sup>12</sup> *Petition of MCI Telecommunications Corporation, Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement between MCI and New York Telephone Company*, Case 96-C-0767, Opinion No. 96-33, Opinion and Order Resolving Arbitration Issues (NYPSC Dec. 23, 1996) at 28.

**F. North Dakota UNE Loop Prices are High in Comparison to Other States**

Integra requests that the Commission take official notice of a report prepared by the National Regulatory Research Institute, which lists all of the UNE 2-wire rates for the entire United States.<sup>14</sup> The report demonstrates that there is a National UNE Weighted Average Rate of \$13.91, and that the North Dakota UNE weighted average monthly loop rate is significantly above the national average. Even though the May 2002 loop rates brought the average rate below \$18.00, and the August 2002 revision will lower it a little more, this rate is still too high to permit effective competition.<sup>15</sup> The North Dakota UNE loop rate must be reduced before effective competition can take place in North Dakota.

**II. QWEST HAS NOT OPENED ITS MARKET TO COMPETITION IN NORTH DAKOTA**

The Qwest Application should be denied because the small degree of local competition in North Dakota shows that Qwest has not opened its markets. Although Qwest claims that it has provided 15,000 stand-alone loops in North Dakota,<sup>16</sup> this sum is minuscule in comparison with other states where Section 271 authority was granted for the first time to a BOC. The total number of UNE loops provided by Qwest is clearly relevant to the analysis, as indicated by the Commission's previous comparison of loops provided by an Applicant to the number of loops

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<sup>13</sup> See *Commission Votes to Reduce Verizon's Wholesale Rates*, New York Public Service Commission Press Release at 1 (Jan. 23, 2002).

<sup>14</sup> See Attachment 1. The report is available on the website of the West Virginia Public Service Commission. <http://www.cad.state.wv.us/Intro%20to%20Matrix%2002.htm>.

<sup>15</sup> As indicated by the NDPSC Report, Qwest's May 16, 2002 proposed new loop rates were \$14.78, \$24.92, and \$56.44 for Zones 1, 2, and 3, respectively, with a port rate remaining at \$1.27, and switching rated at \$0.002435 per minute of use. As noted earlier, Qwest's North Dakota SGAT Sixth Revision Exhibit A filed on August 5, 2002, further lowered Zone 1-3 loop rates to \$13.53, \$22.80, and \$51.65, respectively. As with Qwest's May 16, 2002 revisions, there is no indication that the August 5, 2002 rates have been determined to be TELRIC-compliant by the NDPSC; they suffer from the same misapplication of the Commission's benchmarking process.

<sup>16</sup> See WC Docket No. 02-314, Qwest Supplemental Declaration of David L. Teitzel at 7.

provided to BOCs that have already obtained 271 authority.<sup>17</sup> Verizon's first 271 application stated that Verizon was providing approximately 50,000 loops in New York.<sup>18</sup> SBC's first successful 271 application stated that SBC was providing approximately 54,000 loops in Texas.<sup>19</sup> BellSouth's first successful 271 application stated that BellSouth was providing approximately 80,000 loops in Georgia, and 19,000 loops in Louisiana.<sup>20</sup> Qwest's application for section 271 authority seeks approval in the state of North Dakota, where Qwest has provided only 15,000 unbundled loops.<sup>21</sup> This level of activity by competitors is inadequate to demonstrate that the local market is sufficiently competitive in North Dakota to justify granting Qwest long-distance authority.

### III. THE COMMISSION SHOULD REJECT THE UNE LOOP RATES PROPOSED FOR UTAH

On July 2, 2002, Qwest filed a revision to its Utah SGAT whereby, *inter alia*, it lowered its UNE loop rates. The Public Service Commission of Utah ("PSCU") allowed the new rates to become effective July 10, 2002.<sup>22</sup> Prior to the July 2, 2002 Qwest filing, the UNE loop rates in effect in Utah were those set by the PSCU on June 2, 1999.<sup>23</sup>

The Federal Communications Commission ("Commission") cannot approve Qwest's application for Section 271 authority in Utah based upon the UNE loop rates submitted to the PSCU on July 2, 2002 for all of the reasons previously set out with regard to Qwest's North

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<sup>17</sup> *Pennsylvania 271 Order* at ¶ 77, n.271.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Georgia/Louisiana 271 Order* at ¶ 218.

<sup>21</sup> See WC Docket No. 02-314, Qwest Supplemental Declaration of David L. Teitzel at 7.

<sup>22</sup> *Application of Qwest Corporation for Approval of Compliance with 47 U.S.C. § 271(d)(2)(B), Final Order Regarding Qwest § 271 Compliance*, Docket No. 00-049-08 (PSCU Jul. 8, 2002).

<sup>23</sup> *Investigation into Collocation and Expanded Interconnection*, Docket No. 94-999-01, Phase III Part C Report and Order, Table A at 10 (PSCU Jun. 2, 1999) ("*Utah Phase III-C Order*").

Dakota Application. First, the PSCU has not reviewed these rates.<sup>24</sup> Second, the rates purport to be based upon the “benchmarking” test adopted by the Commission,<sup>25</sup> but Qwest completely misapplies that test.

Third, the “benchmarking” test as applied by Qwest does not produce cost-based rates. By reducing UNE loop rates in Utah, Qwest acknowledges that the UNE rates set three years ago by the PSCU are not TELRIC compliant. Those initial rates, however, are the only rates that have been considered by the PSCU, and the PSCU acknowledged when it set them that they were not TELRIC compliant. Rather, after a tremendous amount of work, the PSCU stated that it had no choice but to set “appropriate” prices for unbundled network elements based upon the record it had before it, which contained no basis upon which to estimate the relationship prices should bear to costs.<sup>26</sup> The PSCU described the reasons that the cost estimation models before it failed to meet the criteria for an acceptable cost estimation model,<sup>27</sup> and expressed its hope that “a future docket . . . may offer us an opportunity to choose a model that both designs a reliable

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<sup>24</sup> *Comments Requested on the Application By Qwest Communications International, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Montana, Utah, Washington, and Wyoming*, Public Notice, WC Docket No. 02-189, DA 02-1666, released July 12, 2002 (“Qwest MT/UT/WA/WY Application”) at 165; Qwest MT/UT/WA/WY Application App. A, Tab 29, Declaration of Jerrold L. Thompson (Cost-Based Rates for Unbundled Network Elements and Interconnection in Utah) at ¶ 37.

The PSCU issued a Procedural Order setting up a schedule for considering deaveraged recurring rates for basic 2- and 4-wire analog (voice grade) unbundled loops, subloop elements, tandem switching, local switching, and the analog port on June 11, 2002. It called for hearings to be held November 19-21, 2002. *In the Matter of the Determination of the Cost of the Unbundled Loop of Qwest Corporation, Inc.*, Docket No. 01-049-85, Procedural Order (Jun. 11, 2002).

<sup>25</sup> Qwest MT/UT/WA/WY Application at 159-160.

<sup>26</sup> *Utah Phase III-C Order* at 10.

<sup>27</sup> The PSCU had no adequate model before it that it could use to set TELRIC-compliant rates. The model used by Qwest and the PSCU’s Division of Public Utilities, called the Integrated Cost Model, or ICM, failed “to produce a comprehensive, efficient, forward-looking result. Instead, the ICM prorates a sample of recent historical costs based on characteristics of various exchanges. It does not design a network, but mimics the embedded costs and practices of recent network experience.” With regard to the HAI model, the PSCU said that “the record shows that the HAI model employs a forward-looking, economically efficient approach. Nevertheless, we find significant problems with the algorithms that locate and design distribution plant.” *Utah Phase III-C Order* at 7-8.

forward-looking economically efficient network and provides plausible TELRIC costs.”<sup>28</sup> Thus, for example, in order to set a rate for the two-wire loop, the PSCU split the difference between the two unacceptable statewide weighted average monthly cost estimates produced by the faulty cost estimation models, \$11.40 per AT&T’s HAI and \$21.51 per Qwest’s ICM (*i.e.*, the PSCU added them together and then divided by two to arrive at the weighted average monthly cost estimate for the two-wire loop that it accepted, \$16.46).<sup>29</sup>

Accordingly, the PSCU has never set TELRIC-compliant UNE loop rates. While the new rates are lower than the old rates, there is no reason to believe that they are based on TELRIC since the old rates were not set based on Qwest’s costs in accordance with TELRIC.

#### **IV. THE COMMISSION SHOULD REJECT THE UNE LOOP RATES PROPOSED FOR WASHINGTON**

##### **A. The Same Defects Applicable to North Dakota Rates and Utah Rates Also Apply to Washington Rates**

On June 10, 2002, Qwest filed new tariff pages with the Washington Utilities and Transportation Commission (“WUTC”) in Docket No. UT-020724 that included a reduction in its rates for 2-wire deaveraged unbundled loops. Qwest filed these tariff pages with an effective date of July 10, 2002. The Commission took no action on Qwest’s filing at its June 26, 2002, open public meeting, allowing the tariff pages to become effective on July 10, 2002.<sup>30</sup> (On June

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<sup>28</sup> *Utah Phase III-C Order* at 8.

<sup>29</sup> *Utah Phase III-C Order* at 8.

<sup>30</sup> *See Investigation Into US West Communications, Inc.’s Compliance With Section 271 of the Telecommunications Act of 1996; In the Matter of US West Communications, Inc.’s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Dockets No. UT-003022, UT-003040, 39<sup>th</sup> Supplemental Order; Commission Order Approving SGAT and QPAP, and Addressing Data Verification, Performance Data, OSS Testing, Change Management, and Public Interest at IV.D.4.9 (WUTC Jul. 1, 2002) (“*WUTC 39<sup>th</sup> Supplemental Order*”); *also see* Qwest MT/UT/WA/WY Application App. A, Tab 30, Declaration of Jerrold L. Thompson (Cost-Based Rates for Unbundled Network Elements and Interconnection in Washington) at ¶ 36, 37 (“Thompson Washington Declaration”).

11, 2002, Qwest also filed a corresponding revised Washington SGAT Exhibit A that included reductions to UNE loop rates, which the WUTC allowed the to go into effect July 10, 2002.)

On September 26, 2002, Qwest revised Exhibit A to its Washington SGAT again, making an additional slight reduction in UNE loop rates. Prior to the June 10, 2002 Qwest filing, the most recent deaveraged UNE loop rates in effect in Washington were those set by the WUTC December 15, 2000.<sup>31</sup>

The Commission cannot approve Qwest's application for Section 271 authority in Washington based upon the UNE loop rates submitted to the WUTC on June 10, 2002 or the more recent rates filed on September 26, 2002, for all of the reasons previously set out with regard to Qwest's North Dakota and Utah Applications: the WUTC has not evaluated these Washington rates;<sup>32</sup> the Washington UNE rates have not been established using a "bottom up" approach; Qwest's use of benchmarking as its own rate-making tool<sup>33</sup> does not show that the Washington rates conform to TELRIC; the benchmarking test as applied by Qwest does not produce cost-based rates; and use of the "benchmarking" test is not appropriate because Qwest has not shown that Colorado is an appropriate benchmark state.

**B. Qwest Does Not Calculate the Washington "Benchmarked" Rates Correctly**

Apart from the same defects that appear with respect to North Dakota and Utah, Qwest has not shown that it properly calculated the "benchmarked" rates for unbundled loops that took

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<sup>31</sup> *Pricing Proceeding for Interconnection, Unbundled Element, Transport and Termination, and Resale; Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale for U S West Communications, Inc.; Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale for GTE Northwest Incorporated*; Dockets No. UT-960369, UT-960370, UT-960371, Thirty-First Supplemental Order; Order on Reconsideration; Modifying Prior Order; Directing Refiling (WUTC Dec. 15, 2000).

<sup>32</sup> Qwest MT/UT/WA/WY Application at 165; Thompson Washington Declaration at ¶ 37.

<sup>33</sup> Qwest MT/UT/WA/WY Application at 159-160.

effect July 10, 2002, or the slightly modified version of those “benchmarked” rates filed September 26, 2002, now in effect in Washington.

With regard to the rates that took effect July 10, 2002, Qwest claimed that it “reduced the 2-wire loop rates in each zone in the state by a uniform percentage to bring the composite statewide average rate down to the level of the Colorado benchmarked composite rate.”<sup>34</sup> However, it did not actually do so. The Washington 2-wire unbundled loop prices Qwest claimed resulted from benchmarking were higher than they should be, had Qwest made straightforward benchmarking calculations.

Qwest skewed the rates by pretending, throughout the series of calculations used in its benchmarking approach, that the WUTC has set a separate grooming charge for unbundled loops, which it has not, and that the grooming charge did not have to be reduced in the process of benchmarking rates for Washington unbundled loops. Specifically, Qwest compared the cost-adjusted Colorado unbundled loop rate with the Washington UNE-P loop price instead of the Washington unbundled loop rate as it should have. Since the Washington UNE-P loop rate is lower than the Washington unbundled loop rate, the difference between the Washington rate and the Colorado rate is made smaller, and so the Washington rates were reduced less, and ultimately the resulting “benchmarked” rates for Washington calculated by Qwest were inaccurately high.<sup>35</sup>

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<sup>34</sup> Qwest MT/UT/WA/WY Application at 163.

<sup>35</sup> Rather than reducing the deaveraged unbundled loop rates set by the WUTC by a percentage arrived at via benchmarking, Qwest carved out \$0.55 from each un-benchmarked deaveraged unbundled loop rate, reduced the remaining amount (which equals the UNE-P loop cost), and then added back in the \$0.55 in its entirety with no reduction to the \$0.55 to come up with the “benchmarked” unbundled loop rates for Washington. If Washington had a separate stand-alone grooming charge of \$0.55, not integral to the unbundled loop rate, that would be appropriate. However, it does not have a separate grooming charge.

By first parsing out one piece of the cost data used by the WUTC in setting the cost of a two-wire unbundled loop (the grooming piece) and not reducing it, Qwest’s “benchmark” rates for two-wire unbundled loops are \$0.09 - \$0.11 higher (depending upon the zone) than they would be if Qwest had done a straightforward uniform percentage reduction of unbundled two-wire loop rates. For example, the WUTC rate for an unbundled two-wire loop in Zone 1 is \$7.91 (Thompson Washington Declaration at ¶ 19). Reducing the unbundled loop rate of \$7.91 by

Qwest's Senior Director – Cost Advocacy, Jerrold L. Thompson, buried the rationale for Qwest's use of this methodology in footnote 70 of his Declaration:

It should be noted that, for benchmarking purposes, Qwest compared the cost-adjusted Colorado rate to the Washington unbundled loop rate that applies in the context of UNE-P, \$17.61, rather than the higher (\$18.16) rate that applies when an unbundled loop is purchased separately from the analog port. This comparison is appropriate because (1) the SM is designed to examine the relative costs of retail services in which, like UNE-P, elements are combined;<sup>36</sup> and (2) the basic \$15.85 Colorado loop rate, which serves as the starting point in the benchmark analysis, also excludes a separate additional charge (\$2.06) that applies when IDLC carrier systems must be demultiplexed down to separate channels.<sup>37</sup> (Note that the Colorado "grooming" charge and the Washington "grooming" charge are not comparable on an "apples-to-apples" basis, since they apply under different conditions: the Washington charge applies to stand-alone loops that are not purchased with switch ports, while the Colorado charge applies only when IDLC carrier systems are used. (Footnotes added.)

It is true that there was a difference of \$0.55 between the deaveraged Washington unbundled loop rates and the Washington UNE-P loop rates that were set by the WUTC, and that the reason for the difference had to do with grooming.<sup>38</sup> However, there is no separate grooming charge in

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20.4% equals \$6.30. However, if one instead reduces only the WUTC UNE-P (bundled) two-wire loop rate for Zone 1, which is \$7.36 (Thompson Washington Declaration at ¶ 39) by 20.4%, getting \$5.86, and then adds back in the full \$0.55 cost element originally used by the WUTC in setting unbundled loop rates, you wind up with Qwest's Zone 1 "benchmarked" rate of \$6.41. The use of this methodology alone increases the Washington benchmarked rate for Zone 1 by \$0.11 (the difference between \$6.30 and \$6.41), and does not even take into account the effect of Qwest's miscalculation of the reduction percentage itself.

With regard to the "reduction percentage" - Qwest uses the lower Washington average bundled/UNE-P loop rate of \$17.61 instead of the higher average unbundled loop rate of \$18.16 in calculating the percentage by which Washington unbundled loop rates are reduced via benchmarking (Thompson Washington Declaration at ¶¶ 17, 39); as a result, the percentage by which Washington rates must be reduced pursuant to benchmarking is inaccurately low (to Qwest's benefit).

<sup>36</sup> Carrying Mr. Thompson's reasoning here out to its logical end would suggest that the use of SM (the FCC's universal service synthesis model) is not appropriate for comparing unbundled network element pricing because unbundled network elements are not combined liked retail offerings.

<sup>37</sup> The Colorado rate for an unbundled loop also excludes other irrelevant costs, which does nothing to change the fact that when applying benchmarking, one must compare the cost of an unbundled loop in one state to the cost of an unbundled, not bundled (UNE-P), loop in another state.

<sup>38</sup> The WUTC has stated that:

U S West and GTE shall charge statewide average unbundled loop prices of \$18.16 and \$23.94, respectively, pending a Commission decision on geographically deaveraged prices in Phase III of this proceeding. When an interconnecting local exchange company orders a bundled loop and port from U S West, the statewide average price of the loop shall be \$17.59.

and



Qwest's Washington SGAT or tariff (although Mr. Thompson shows it as a separate item in Exhibit JLT-WA-2 of his Washington Pricing Declaration). To perform a benchmarking analysis, one must compare "apples to apples" and unbundled loops to unbundled loops, which Qwest has not done.

As noted, Qwest has made additional reductions to the rates that took effect on July 10, 2002, in an effort to appease commenters on the issue of TELRIC-compliant UNE rates in Washington.<sup>39</sup> Although there are brand new Qwest rates yet again and they are slightly lower, as with the previous revision, there is no indication that these rates have been determined to be TELRIC-compliant by the WUTC and they too suffer from the same misapplication of the Commission's benchmarking process.

**C. Washington UNE Loop Prices are High in Comparison to Other States**

According to the July 1, 2002 update of the Survey of Unbundled Network Element Prices in the United States,<sup>40</sup> as of July 1, 2002, the National UNE Weighted Average Loop Rate was \$13.43, and the Washington UNE weighted average monthly loop rate was \$14.56 (the weighted average monthly loop rate per Qwest's new "benchmarked" rates filed June 10, 2002),

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The price of a bundled loop for U S West should be \$17.59 when a CLEC orders a bundled loop and port because grooming is not needed in that situation.

*Pricing Proceeding for Interconnection, Unbundled Element, Transport and Termination, and Resale; Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale for U S West Communications, Inc.; Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale for GTE Northwest Incorporated; Dockets No. UT-960369, UT-960370, UT-960371, 17th Supplemental Order: Interim Order Determining Prices; Notice of Prehearing Conference, at ¶ 510 (WUTC Sep. 23, 1999).*

<sup>39</sup> Qwest's proposed Washington rates for unbundled loops which took effect on July 10, 2002 were \$6.41, \$11.35, \$12.76, and \$19.06 for Zones 1, 2, 3, 4, and 5, respectively. The port rate was \$1.34 per month, and switching was rated at \$0.00120 per minute of use. See Thompson Washington Declaration at ¶ 20, 39. Qwest filed its Washington SGAT Eighth Revision Exhibit A on September 26, 2002, lowering the UNE loop rates for Zones 1 - 4 to \$6.05, \$10.99, \$12.40, and \$13.95.

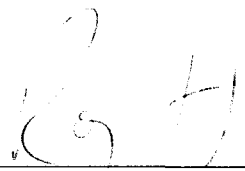
<sup>40</sup> See Attachment 1. The report is available on the website of the National Regulatory Research Institute at <http://www.nrri.ohio-state.edu/programs/telecommunications.html>, and is also available on the website of the West Virginia Public Service Commission at the following address: [http://www.cad.state.wv.us/Intro%20to%20Matrix.htm#N\\_1\\_](http://www.cad.state.wv.us/Intro%20to%20Matrix.htm#N_1_).

above the national average. Qwest's loop rates effective July 10, 2002 that brought the average rate to \$14.56 were still too high to permit effective competition, as are the rates just filed September 26, 2002.<sup>41</sup> The Washington UNE loop rate must be reduced before effective competition can take place in Washington.

V. **CONCLUSION**

For the foregoing reasons, the Qwest 271 Applications for North Dakota, Utah and Washington should be denied.

Respectfully submitted,



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Dated: October 15, 2002

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<sup>41</sup> See footnote 39, *supra*.

**ATTACHMENT 1**

STATE LOOP AND UNE-P RATES SORTED BY WEIGHTED AVERAGE RATES

| <u>State</u>      | <u>Average<br/>Monthly<br/>Loop Rates</u> | <u>State</u>      | <u>Average<br/>Monthly<br/>UNE-P Rates</u> |
|-------------------|---|-------------------|--|
| West Virginia     | \$24.58                                   | West Virginia     | \$33.42                                    |
| Montana           | \$23.72                                   | Wyoming           | \$29.72                                    |
| Wyoming           | \$23.39                                   | New Hampshire     | \$28.13                                    |
| Arizona           | \$21.98                                   | South Dakota      | \$26.40                                    |
| Mississippi       | \$21.26                                   | Arizona           | \$26.39                                    |
| South Dakota      | \$21.09                                   | Montana           | \$25.99                                    |
| New Mexico        | \$20.50                                   | Mississippi       | \$25.75                                    |
| Idaho             | \$20.42                                   | Idaho             | \$23.49                                    |
| Nevada            | \$19.83                                   | Nevada            | \$23.07                                    |
| Alabama           | \$19.04                                   | New Mexico        | \$22.99                                    |
| Kentucky          | \$18.41                                   | Connecticut       | \$22.95                                    |
| New Hampshire     | \$17.99                                   | Alabama           | \$22.81                                    |
| Minnesota         | \$17.87                                   | Louisiana         | \$21.96                                    |
| North Dakota      | \$17.79                                   | Kentucky          | \$21.10                                    |
| South Carolina    | \$17.60                                   | Minnesota         | \$20.76                                    |
| Nebraska          | \$17.51                                   | Nebraska          | \$20.67                                    |
| Louisiana         | \$17.31                                   | South Carolina    | \$20.30                                    |
| Georgia           | \$16.51                                   | Massachusetts     | \$20.28                                    |
| Iowa              | \$16.47                                   | Maryland          | \$20.20                                    |
| Maine             | \$16.19                                   | Georgia           | \$19.99                                    |
| Utah              | \$16.13                                   | Oklahoma          | \$19.95                                    |
| North Carolina    | \$15.88                                   | North Carolina    | \$19.77                                    |
| Colorado          | \$15.85                                   | North Dakota      | \$19.75                                    |
| Florida           | \$15.81                                   | Colorado          | \$19.71                                    |
| Missouri          | \$15.19                                   | Utah              | \$19.69                                    |
| Oregon            | \$15.00                                   | Missouri          | \$19.49                                    |
| Massachusetts     | \$14.98                                   | Vermont           | \$19.44                                    |
| Tennessee         | \$14.92                                   | Texas             | \$19.17                                    |
| Oklahoma          | \$14.84                                   | Maine             | \$18.81                                    |
| Washington        | \$14.62                                   | Iowa              | \$18.31                                    |
| Maryland          | \$14.50                                   | Pennsylvania      | \$18.19                                    |
| Vermont           | \$14.41                                   | Wisconsin         | \$18.06                                    |
| Texas             | \$14.15                                   | Virginia          | \$18.00                                    |
| Kansas            | \$14.04                                   | Florida           | \$17.98                                    |
| Rhode Island      | \$13.93                                   | Tennessee         | \$17.61                                    |
| Pennsylvania      | \$13.81                                   | Oregon            | \$17.59                                    |
| Virginia          | \$13.60                                   | Kansas            | \$17.49                                    |
| <b>US Average</b> | <b>\$13.43</b>                            | <b>US Average</b> | <b>\$17.48</b>                             |
| Arkansas          | \$13.09                                   | Washington        | \$17.16                                    |
| Connecticut       | \$12.49                                   | Rhode Island      | \$17.07                                    |
| Delaware          | \$12.05                                   | Delaware          | \$17.06                                    |
| New York          | \$11.49                                   | Indiana           | \$16.98                                    |
| Wisconsin         | \$10.90                                   | Arkansas          | \$16.54                                    |
| D.C.              | \$10.81                                   | D.C.              | \$15.36                                    |
| Michigan          | \$10.15                                   | New York          | \$15.19                                    |
| California        | \$9.93                                    | Ohio              | \$14.87                                    |
| Illinois          | \$9.81                                    | Illinois          | \$14.82                                    |
| New Jersey        | \$9.52                                    | Michigan          | \$13.87                                    |
| Indiana           | \$8.20                                    | New Jersey        | \$12.89                                    |
| Ohio              | \$7.01                                    | California        | \$11.58                                    |